



TRV 2010112822  
6 PGS

Zoning Case No. C14-2009-0135

RESTRICTIVE COVENANT  
AUSTIN CITY CLERK  
POSTING: DATE/TIME



OWNER: HW Tosca Investments LP, a Texas limited partnership  
 ADDRESS: 5300 Bee Caves Road, Suite 1220, West Lake Hills, Texas 78746  
 CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.  
 PROPERTY: A 36.46 acre tract of land, more or less, out of the L.C. Cunningham Survey No. 63, in Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant.

WHEREAS, the Owner (the "Owner", whether one or more) of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant ("Agreement"). These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by HDR Engineering, Inc., dated October 12, 2009, or as amended and approved by the Director of the Planning and Development Review Department. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Planning and Development Review Department, dated April 14, 2010. The TIA shall be kept on file at the Planning and Development Review Department.
2. A 25-foot setback along the south and east property lines shall be established for dumpster uses located on the Property.
3. If any person or entity shall violate or attempt to violate this Agreement, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such Agreement, to prevent the person or entity from such actions, and to collect damages for such actions.
4. If any part of this Agreement is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Agreement, and such remaining portion of this Agreement shall remain in full effect.

7-29-10  
#111

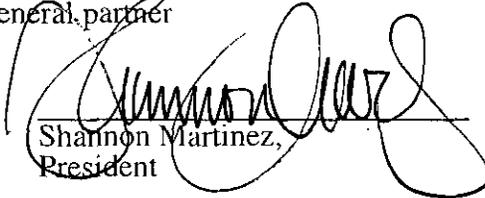
5. If at any time the City of Austin fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
6. This Agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property, or a portion of the Property, subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 26 day of July, 2010.

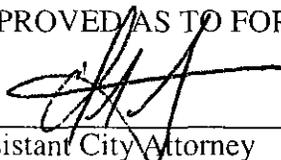
**OWNER:**

HW Tosca Investments, LP,  
a Texas limited partnership

By: HW Tosca Management, LLC,  
a Texas limited liability company,  
its general partner

By:   
Shannon Martinez,  
President

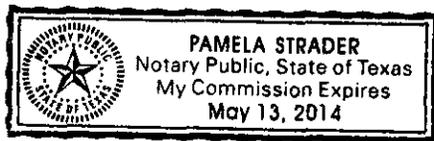
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney  
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 26<sup>th</sup> day of July, 2010, by Shannon Martinez, President of HW Tosca Management, LLC, a Texas limited liability company, general partner of HW Tosca Investments, LP, a Texas limited partnership, on behalf of the company and the limited partnership.



  
\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "A"**

BEING A 36.46 ACRE TRACT OF LAND OUT OF THE L.C. CUNNINGHAM SURVEY NUMBER 63, AS SITUATED IN TRAVIS COUNTY, TEXAS, SAME BEING A PORTION OF THE CALLED 91.1530 ACRE TRACT OF LAND, AS CONVEYED TO NEW WELLS POINT PARTNERS, LTD., AND DESCRIBED AS EXHIBIT "A-2", TRACT TWO IN DOCUMENT NUMBERS 1999046434 AND 1999046435 BOTH OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 36.46 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

COMMENCING at a 1/2" rebar found, said point being the South corner of a called 10.51 acre Drainage Easement, as conveyed to the City of Pflugerville in Volume 12175, Page 87 of the Real Property Records of Travis County, Texas, same being in the common line between the said 91.1530 acre tract, and a tract of land as conveyed to Village @ Northtown, Ltd. (hereinafter the "Northtown" tract) in Document Number 2000156544 of the Official Public Records of Travis County, Texas;

THENCE, S 29° 19' 29" W, along the common line between the aforementioned Northtown tract and the 91.1530 acre tract, for a distance of 309.50 feet, to a 1/2" rebar found, for an angle point, and S 29° 25' 44" W, for a distance of 690.68 feet, to a 1/2" rebar set, for the southeast corner and PLACE OF BEGINNING hereof;

THENCE, S 29° 25' 44" W, along the aforementioned common line for an additional distance of 640.47 feet, to a 1/2" rebar found said point being an interior ell corner of the said Northtown tract, the most southerly corner of the said 91.1530 acre tract and the most southerly corner hereof (and from which rebar found an iron pipe found bears, N 31° 24' 10" W at a distance of 3.04 feet);

THENCE, N 60° 13' 50" W, along the common line between the aforementioned Northtown tract and the 91.1530 acre tract, for a distance of 1,469.74 feet, to a 1/2" iron pipe found for an angle point, and N 62° 15' 20" W, for a distance of 71.51 feet, to a fence post found, said point being the northwest corner of the said Northtown tract, same being the northeast corner of a called 33.038 acre tract of land as conveyed to Sealy Heatherwilde, L.P. in Document Number 2000101896 of the Official Public Records of Travis County, Texas, for an angle point hereof (and from which fence post a rebar found bears N 59° 26' 37" E at a distance of 1.28 feet);

THENCE, N 61° 05' 03" W, along the common line between the aforementioned Sealy tract and the 91.1530 acre tract, for a distance of 439.55 feet, to a 60 d nail found, said point being on the proposed East r-o-w extension of Heatherwilde Boulevard, for the most westerly corner hereof;

THENCE, through the aforementioned 91.1530 acre tract and along the East r-o-w line of the proposed extension of Heatherwilde Boulevard the following three (3) courses;

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1.) N 29° 09' 56" E, for a distance of 103.66 feet to a cotton spindle set at point of curvature to the right, said curve having a radius of 950.55 feet;

2.) Along said curve to the right, with an arc distance of 623.37 feet, and which chord bears N 47° 56' 27" E, at a distance of 612.26 feet, to a cotton spindle set at a point of tangency;

3.) N 66° 42' 57" E, for a distance of 619.91 feet to a cotton spindle set, at a point of curvature to the right, having a radius of 25.00 feet;

THENCE, with said curve to the right, with an arc distance of 39.28 feet, and which chord bears S 68° 17' 03" E, at a distance of 35.37 feet, to a cotton spindle set, at a point of tangency on the proposed extension of Wells Branch Parkway;

THENCE, continuing through the interior of the aforementioned 91.1530 acre tract, and along the West line of the proposed extension of Wells Branch Parkway the following three (3) courses;

1.) S 23° 21' 10" E, for a distance of 356.41 feet to a capped 1/2" rebar found at a point of curvature to the left, said curve having a radius of 1608.00 feet;

2.) with said curve to the left, with an arc distance of 1048.51 feet, and which chord bears S 41° 55' 34" E, at a distance of 1030.03 feet, to a capped 1/2" rebar found at a point of tangency;

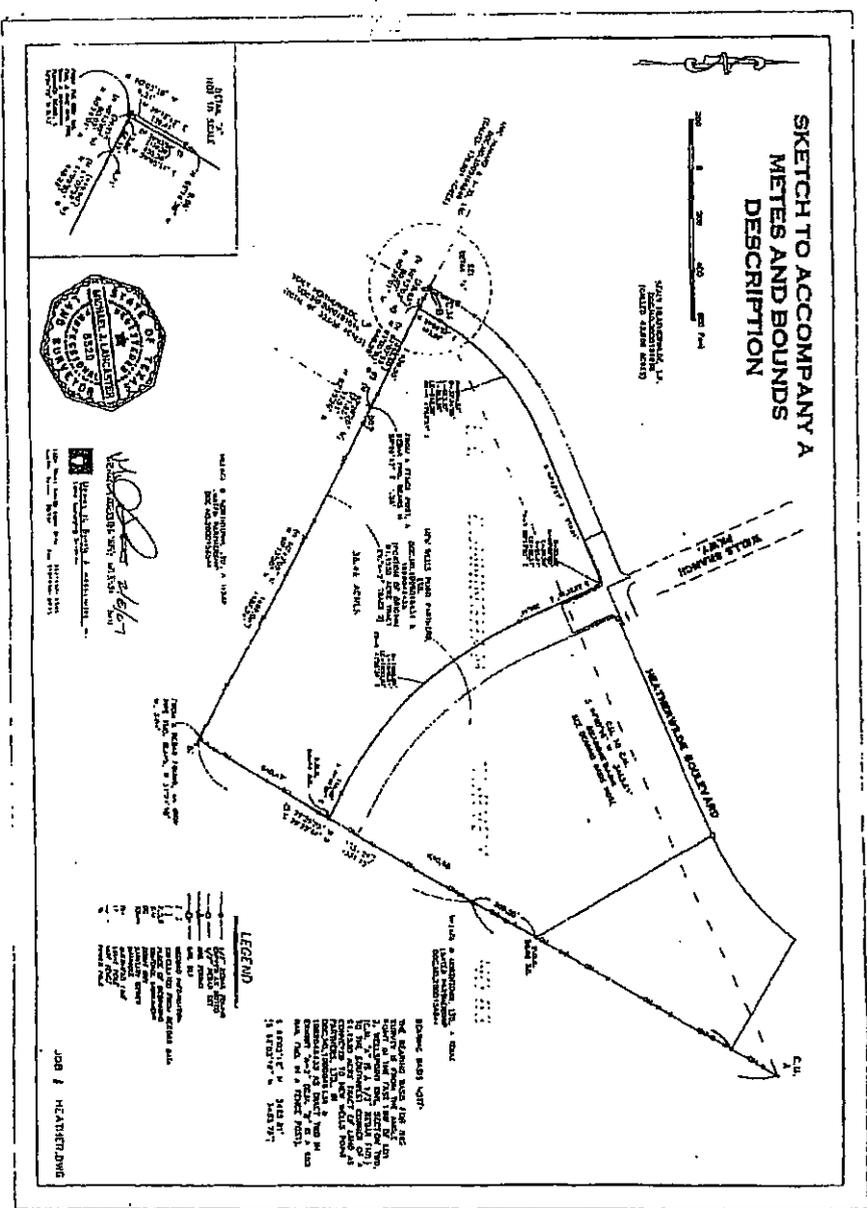
3.) S 60° 48' 09" E, for a distance of 116.42 feet, to the PLACE OF BEGINNING hereof and containing 36.46 acres of land, more or less.

THIS METES AND BOUNDS DESCRIPTION IS TO BE USED WITH THE ATTACHED PLAT.

 2/8/07  
MICHAEL LANCASTER RPLS 5529  
Dewey H. Burris & Associates, Inc.  
1404 W. North Loop Blvd.  
Austin, Texas 78756  
HEATHER\_36.46\_AC



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After Recording, Please Return to:  
City of Austin  
Department of Law  
P. O. Box 1088  
Austin, Texas 78767-1088  
Attention: Diana Minter, Paralegal

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

Aug 04, 2010 05:01 PM 2010112822

BARTHOLOMEWD: \$36.00

Dana DeBeauvoir, County Clerk  
Travis County TEXAS